Supreme Court, U.S.
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No. 96-1400

In The

Supreme Court of the United States

OCTOBER TERM, 1997

STATE OF CALIFORNIA, STATE LANDS COMMISSION,
Petitioners,

v.

DEEP SEA RESEARCH, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF THE NATIONAL TRUST FOR HISTORIC PRESERVATION, ADVISORY COUNCIL ON UNDERWATER ARCHAEOLOGY, COUNCIL OF AMERICAN MARITIME MUSEUMS, INSTITUTE OF NAUTICAL ARCHAEOLOGY, NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS, NORTH AMERICAN SOCIETY FOR OCEANIC HISTORY, SOCIETY FOR AMERICAN ARCHAEOLOGY, SOCIETY FOR CALIFORNIA ARCHAEOLOGY, SOCIETY FOR HISTORICAL ARCHAEOLOGY, AND SOCIETY OF PROFESSIONAL ARCHEOLOGISTS AS *AMICI CURIAE* SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

1. Whether, in an *in rem* admiralty action seeking title or salvage rights to a shipwreck lying on the submerged lands of a State, a State is entitled to immunity from suit under the Eleventh Amendment only if it can prove, by a preponderance of the evidence, that it owns the shipwreck.

2. Whether the Abandoned Shipwreck Act, 43 U.S.C. §§ 2101-2106 ("ASA"), preempts state laws governing title to historic shipwrecks that are not protected by the ASA.

3. Whether a long-lost historic shipwreck should be deemed not abandoned, and therefore not protected by the ASA, because an insurance company may have paid a claim on a portion of the ship's cargo.

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INTERESTS OF *AMICI CURIAE*

The National Trust for Historic Preservation in the United States ("National Trust") was chartered by Congress in 1949 as a private nonprofit corporation to facilitate public participation in historic preservation and to further the historic preservation policies of the United States. *See* 16 U.S.C. § 468 (1994). Additional information describing the National Trust, the Advisory Council on Underwater Archaeology, the Council of American Maritime Museums, the Institute of Nautical Archaeology, the National Conference of State Historic Preservation Officers, the North American Society for Oceanic History, the Society for American Archaeology, the Society for California Archaeology, the Society for Historical Archaeology, and the Society of Professional Archeologists is included in the Appendix.[1]

Recognizing that the United States' irreplaceable maritime legacy of historic shipwrecks was being damaged or destroyed through unregulated commercial exploitation, the *amici* organizations actively supported passage of the Abandoned Shipwreck Act of 1987 ("ASA" or "the Act"), 43 U.S.C. §§ 2101-2106 (1994), in order to clarify the States' authority to protect historic shipwrecks. The National Trust and many of the other *amici* have participated in lower court cases involving historic shipwrecks and the ASA in an attempt to prevent the deterioration or destruction of these valuable

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[1] Pursuant to Sup. Ct. R. 37.3(a), the *amici* have obtained from all parties their written consent to the filing of this brief. Pursuant to Sup. Ct. R. 37.6, counsel for the *amici* certify that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than the *amici*, its members, or its counsel has made a monetary contribution to the preparation or submission of this brief.

historic resources.[2] Additionally, the National Trust has monitored litigation concerning historic shipwrecks both before and after the passage of the ASA and its judicial interpretation throughout the country.[3] Thus, the *amici* have a substantial interest in the validity and effectiveness of the ASA and other federal and state historic preservation laws.

INTRODUCTION

1. *Historic Value of Shipwrecks*. Historic shipwrecks are time capsules of our heritage. Because a shipwreck lies undisturbed until discovery, the site contains a cross-section of the past — a tableau that tells us about a ship, its cargo, and the lives of its crew and passengers. Study of these sites provides invaluable information about maritime history and technology, international and regional trade, and the seafaring life.

Spurred by worldwide losses of ships bearing valuable cargos during World War I, technology was developed by the 1920s that enabled salvors to recover objects from 250 feet or more below the surface, largely using smash-and-grab

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[2] *See Zych v. Unidentified, Wrecked & Abandoned Vessel, Believed to be the SB "Seabird,"* 746 F.Supp. 1334 (N.D. Ill. 1990), *rev'd*, 941 F.2d 525 (7th Cir. 1991), *on remand*, 811 F.Supp. 1300 (N.D. Ill. 1992), *aff'd*, 19 F.3d 1136 (7th Cir. 1994), *cert. denied*, 513 U.S. 961 (1994); *Zych v. Unidentified, Wrecked & Abandoned Vessel, Believed to be the SB "Lady Elgin,"* 755 F. Supp. 213 (N.D. Ill. 1991), *rev'd*, 960 F.2d 665 (7th Cir. 1992), *cert. denied*, 506 U.S. 985 (1992); *United States v. Steinmetz*, 973 F.2d 212 (3d Cir. 1992), *cert. denied*, 507 U.S. 984 (1993).

[3] *See* 15 Preservation L. Rep. 1159 (1996) ("PLR"); 14 PLR 1096, 1192 (1995); 13 PLR 1081, 1157 (1994); 12 PLR 1001 (1993); 11 PLR 1109 (1992); 10 PLR 1155 (1991); 8 PLR 3044, 3046, 3048, 3049 (1989); 7 PLR 1001 (1988); Thompson M. Mayes, *Current Legal Issues in the Law of Historic Shipwrecks*, 5 PLR 2027 (1986).

techniques such as clam-shell buckets guided by divers.[4] Beginning in the early 1960's, innovations in technology made it possible to treat shipwrecks as archaeological sites that could be studied systematically and preserved with the same degree of precision and care as sites on land. Archaeologists and historians since have excavated a rapidly growing number of shipwreck sites in accordance with scientific standards, producing major breakthroughs in our knowledge of maritime history and culture, and making this information available for study and museum display.[5] However, the same advances in scuba and other underwater technology have placed these sites within the reach of salvors and looters who are motivated primarily by the possibility of reaping pecuniary gain from the artifacts located at the shipwreck sites.

Commercial exploitation of historic shipwrecks can easily result in the loss or destruction of this priceless legacy. Where recovery techniques fail to preserve and document a vessel's contents, crucial elements of the story of a vessel and its times are forever lost. Where proper conservation techniques are not applied, the rapid deterioration of ancient materials exposed to surface conditions makes it impossible to glean accurate scientific and historical information from the remains, or to make them available for public display.

Too often, historic shipwrecks are exploited for their monetary value, and are either intentionally looted or inadvertently destroyed without regard for their irreplaceable historic and cultural value. The primary goal of even the best-intentioned commercial salvors is financial return, not

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[4] *See generally* A. Crothall, *Wealth From The Sea* (1993). As early as 1915, the United States submarine F-4 was raised from 330 feet. *See* W.F. Searle, Jr., *Advanced Deep Salvage Operations*, Oceanology International, March 1969.

[5] *See generally* G. Bass, *Archaeology Under Water* (1966).

documentation and preservation of historically significant artifacts.

2. *The Brother Jonathan*. The *Brother Jonathan* illustrates the value of historic shipwrecks. Built in 1850, the ship represents a significant departure from earlier ocean-going designs, and marks the transition from sailing-ship-inspired hulls to the straight-stemmed hull common to later steamships. The *Brother Jonathan* played a significant role in the development of Pacific coast ports, beginning with the discovery of gold in British Columbia in 1858. The vessel appears to have sunk more or less intact, leaving many artifacts in their original places. The site also marks the final resting place of the 225 people who perished in what is still regarded as the greatest maritime disaster in California waters. Because of its unique design, its role in the Gold Rush, and the integrity of its well-preserved remains, the *Brother Jonathan* has been determined eligible for listing on the National Register of Historic Places, and is a California Registered Landmark. *See* J.A. 566-72.

3. *The Abandoned Shipwreck Act*. Congress enacted the ASA, 43 U.S.C. §§ 2101-2106, in 1987 in response to increasing confusion and conflict over the appropriate judicial forum and legal principles for resolving ownership of these irreplaceable cultural resources.[6] Congress determined that

[6] *See, e.g., Maritime Underwater Surveys, Inc. v. Unidentified, Wrecked & Abandoned Sailing Vessel*, 717 F.2d 6 (1st Cir. 1983); *Jupiter Wreck, Inc. v. Unidentified, Wrecked & Abandoned Sailing Vessel*, 691 F. Supp. 1377 (S.D. Fla. 1988); *Chance v. Certain Artifacts Found and Salvaged from the Nashville, A/K/A, The Rattlesnake*, 606 F. Supp. 801 (S.D. Ga. 1984), *aff'd mem.*, 775 F.2d 302 (11th Cir. 1985); *Subaqueous Exploration & Archaeology, Ltd. v. Unidentified, Wrecked & Abandoned Vessel*, 577 F. Supp. 597 (D. Md. 1983), *aff'd without op.*, 765 F.2d 139 (4th Cir. 1985). *Contra, Cobb Coin Co., Inc. v. Unidentified, Wrecked & Abandoned Sailing Vessel*, 549 F. Supp. 540 (S.D. Fla. 1982); *Cobb Coin Co., Inc. v. Unidentified, Wrecked & Abandoned Sailing Vessel*, 525 F. Supp. 186 (S.D. Fla. 1981).

historic abandoned shipwrecks located in or on the State's submerged lands are most appropriately owned and managed by the States, which have expertise and established programs for the management of these resources. Congress' intent was to clarify the States' ability to exercise stewardship over these sites, so that the States no longer would be required to litigate claims to historic shipwrecks in protracted cases involving unsettled law in federal admiralty courts. *See* S. Rep. No. 100-241, at 3 (1987).

Under the ASA, the federal government asserted title to certain historic shipwrecks and transferred title to the States. 43 U.S.C. § 2105.[7] The States typically protect historic shipwreck sites through permits that require scholars and salvors to excavate the sites in accordance with professional archaeological standards, which would not necessarily be required by admiralty courts. *See Moyer v. Wrecked & Abandoned Vessel, Known as the Andrea Doria*, 836 F. Supp. 1099, 1107 (D. N.J. 1993).[8]

[7] Under the ASA, the United States asserted title

> to any abandoned shipwreck that is—
> (1) embedded in submerged lands of a State;
> (2) embedded in coralline formations protected by a State on submerged lands of a State; or
> (3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

43 U.S.C. § 2105(a). The United States then transferred its title in these shipwrecks to the States. *See id.* § 2105(c).

[8] All 50 States have programs of cultural resource management, and at least 28 States had specific laws relating to the treatment of underwater archaeological resources when the ASA was enacted. *See* H.R. Rep. No.

Prior to the ASA, States argued that the Eleventh Amendment barred *in rem* admiralty actions in federal court in which treasure salvors sought to adjudicate the State's interest in historic shipwrecks located on the State's submerged lands. *See, e.g., Maritime Underwater Surveys, Inc. v. Unidentified, Wrecked & Abandoned Sailing Vessel*, 717 F.2d 6 (1st Cir. 1983); *Jupiter Wreck, Inc. v. Unidentified, Wrecked & Abandoned Sailing Vessel*, 691 F. Supp. 1377 (S.D. Fla. 1988). States typically asserted title to the shipwrecks under state preservation statutes and the Submerged Lands Act of 1953, 43 U.S.C. §§ 1301-1315 (1994). *See, e.g., Subaqueous Exploration*, 577 F. Supp. at 608 (D. Md. 1983). Following enactment of the ASA, the Eleventh Amendment continues to provide States with immunity from suit in federal court over these claims, as Congress intended. *See* H.R. Rep. No. 100-514(II), at 2-3 (1988).

SUMMARY OF ARGUMENT

The court of appeals incorrectly held that the State is not entitled to Eleventh Amendment immunity unless a federal court determines that the State has a "colorable claim" to the *Brother Jonathan*. The Court defined a "colorable claim" to require proof by a preponderance of the evidence that a shipwreck satisfies all the criteria of the ASA. That holding is contrary to established Eleventh Amendment principles. First, the Eleventh Amendment applies to admiralty proceedings, including *in rem* proceedings. Second, the Eleventh Amendment applies if the State is a "party in fact," whether or not it is a named party to the action. Third, the Eleventh Amendment provides an immunity from suit, which protects States from being subjected to the indignity of the

100-514(II), at 1. Forty States now have established programs for the protection of historically significant shipwrecks. *See* Pet. 15 n.5.

coercive process of a judicial tribunal at the instance of private parties. Consequently, it is the existence of the State's claim to the wreck, and not the strength of the State's claim, that establishes Eleventh Amendment immunity. There is no doubt that California has asserted a claim to the *Brother Jonathan*, and that is sufficient to establish Eleventh Amendment immunity. California's entitlement to Eleventh Amendment immunity is reinforced by respondent's stipulation that the shipwreck is located on the State's sovereign lands.

In the course of ruling that California is not entitled to Eleventh Amendment immunity in this case, the court of appeals made additional rulings that could seriously damage the legal framework that Congress has established to protect historic shipwrecks.

First, the court of appeals held that the ASA preempts a California statute that provides additional protection to archaeological sites and historic resources located on the State's submerged lands.[9] The court of appeals' preemption ruling is not supported by the text or purpose of the ASA, which Congress enacted to confirm the States' title to and authority over historic shipwrecks. The California statute does not conflict with the objectives of the ASA; indeed, it furthers those objectives.

The court of appeals also erred in ruling that no part of the *Brother Jonathan* had been abandoned. Respondent obtained an assignment of interests in a fraction of the *Brother Jonathan*'s cargo from successors of the insurance companies that reportedly had paid claims on that portion of the cargo at the time of the sinking. Respondent then argued that the

[9] Cal. Pub. Res. Code § 6313(a) (West Supp. 1997) provides, in part, that "[t]he title to all abandoned shipwrecks and all archaeological sites and historic resources on or in the tide and submerged lands of California is vested in the state."

assignors had not abandoned their interests.[10] The Ninth Circuit incorrectly agreed.

The court concluded that no inference of abandonment arises where salvage has become possible only recently due to advances in salvage technology, which the court assumed to be true in the case of the *Brother Jonathan*. Prior to the ASA, it was generally understood that abandonment of a vessel may be implied from the owner's inaction over a period of time. This understanding, which is reflected in the legislative history of the ASA and guidelines promulgated pursuant to the Act, is consistent with the congressional purpose. The court of appeals' contrary holding would frustrate the purpose of the ASA by judging past intentions in the light of present-day capabilities.

Finally, contrary to the court of appeals' conclusion, there is no general admiralty principle that a vessel and its cargo must be treated as a "unified *res*." Nor does the possibility that a salvor will be required to litigate in both federal and state court justify a rule that effectively would deny the protection of the ASA to countless historic shipwrecks.[11]

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[10] Since the enactment of the ASA, commercial salvors have used this tactic to revive dormant insurance claims. *See, e.g., Zych v. Wrecked Vessel Believed To Be The "Lady Elgin,"* 960 F.2d 665, 668 (7th Cir.), *cert. denied*, 506 U.S. 985 (1992). In this case, newspaper reports at the time of the sinking indicated that about two thirds of the *Brother Jonathan*'s cargo was not insured. Pet. App. A4, A31 n.9. There is no evidence that the vessel itself was insured. *Id.*

[11] Because of the importance of the court of appeals' rulings on preemption and abandonment, this Court may wish to consider providing guidance to lower courts on those issues even if it holds that California is entitled to Eleventh Amendment immunity. In the alternative, the Court may wish to state explicitly that it expresses no opinion as to the correctness of the lower court's rulings on those issues.

ARGUMENT

I. THE ELEVENTH AMENDMENT BARS FEDERAL COURTS FROM ADJUDICATING AN UNCONSENTING STATE'S INTEREST IN HISTORIC SHIPWRECKS LOCATED ON THE STATE'S SUBMERGED LANDS.

The Eleventh Amendment applies to admiralty proceedings, including *in rem* proceedings. *See In re New York*, 256 U.S 490 (1921) (*New York I*); *In re New York*, 256 U.S. 503 (1921) (*New York II*). Even though respondent did not name the State as a party to this action,

> [i]t is well established that the [Eleventh] Amendment bars suits not only against the State when it is the named party but also when it is the party in fact. Its applicability "is to be determined not by the mere names of the titular parties but by the essential nature and effect of the proceeding, as it appears from the entire record."

Scheuer v. Rhodes, 416 U.S. 232, 237 (1974) (quoting *New York I*, 256 U.S. at 500) (citations omitted)).

The effect of a judgment in an *in rem* admiralty action is to establish the plaintiff's right to title in the defendant *res* against all of the world, *i.e.*, "the whole world is bound by the decision." *The Mary*, 13 U.S. (9 Cranch) 125, 143 (1815) (Marshall, C.J.).[12] Consequently, a judgment *in rem* that

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[12] *See also Rounds v. Cloverport Foundry & Mach. Co.*, 237 U.S. 303, 306-07 (1915) ("By virtue of dominion over the thing all persons interested in it are deemed to be parties to the [*in rem*] suit; the decree binds all the world and under it the property itself passes and not merely the title or interest of a personal defendant."); *The Moses Taylor*, 71 U.S. (4 Wall.) 411, 427 (1866) ("It is this dominion of the suit in admiralty over the vessel or thing itself which gives to the title made under its decrees validity against all the world."). *See generally* 29 James W. Moore, *Moore's Federal Practice* § 703.06[2] (3d ed. 1997).

determines a State's claim to the *res* is a judgment "against one of the United States" for Eleventh Amendment purposes. *Zych v. Wrecked Vessel Believed To Be The "Lady Elgin"*, 960 F.2d 665, 669 (7th Cir.) (citations omitted), *cert. denied*, 506 U.S. 985 (1992). In *Florida Dep't of State v. Treasure Salvors, Inc.*, 458 U.S. 670 (1982), eight members of this Court agreed that the Eleventh Amendment deprives a federal court of the power to determine a State's interest in property that is the subject of an *in rem* admiralty action. *See id.* at 682 (Stevens, J., joined by Burger, C.J., and Marshall and Blackmun, JJ.) ("The [district] court did not have power . . . to adjudicate the State's interest in the property without the State's consent"); *id.* at 706 (White, J., concurring in the judgment, joined by Powell, Rehnquist and O'Connor, JJ.) ("A suit of this type [to determine a State's title to artifacts] is at the heart of the Eleventh Amendment immunity.").

The court of appeals' conclusion that Eleventh Amendment immunity turns on whether the State can establish a "colorable claim" of ownership, *see* Pet. App. A10-A14, rests on a misreading of the plurality opinion in *Treasure Salvors*. The question presented in *Treasure Salvors* was whether the Eleventh Amendment immunized property held by state officials from a federal court's process. *See id.* at 673, 683, 697. The plurality treated the action as one controlled by *Ex parte Young*, 209 U.S. 123 (1908). In applying the *Ex parte Young* doctrine, the plurality looked to whether the state officials had acted *ultra vires*. It was in the course of this analysis that the plurality found it relevant that the state officials lacked a "colorable claim" of authority to retain possession of the property. *See Treasure Salvors*, 458 U.S. at 694-97. Accordingly, as other courts of appeals have recognized, the "colorable claim" standard has no application to the *State's* assertion of a claim to ownership of the property at issue. *See Zych*, 960 F.2d at 670 ("The strength of the

state's legal position is irrelevant."); *Fitzgerald v. Unidentified, Wrecked & Abandoned Vessel*, 866 F.2d 16, 18 (1st Cir. 1989) (action is barred "irrespective of the actual merit of the [State's] claim to the salvaged wreck . . . ."); *Maritime Underwater Surveys*, 717 F.2d at 8 ("[B]ecause of the Eleventh Amendment's flat prohibition of suits against states regardless of their merit, we need not reach the colorability of the [State's] claim . . . .").

Of course, "[t]o know whether a general all-the-world injunction runs against a state, the court must determine whether the state has some interest." *Zych*, 960 F.2d at 670. "In this sense, some view of the merits is inevitable." *Id.* But "it is the existence, and not the strength, of the [State's] claim that activates the eleventh amendment." *Id.*

In this case, there is no doubt that California has claimed ownership of the *Brother Jonathan* under both the ASA and state law. It is undisputed that respondent seeks title to the wreck of the *Brother Jonathan*. *See* Pet. App. A3, A22. Moreover, respondent has stipulated that the wreck is located on the submerged lands of the State of California. *See* Pet. App. A6, A24 n.4. This Court recently reaffirmed that "lands underlying navigable waters have historically been considered 'sovereign lands,'" and that "[s]tate ownership of them has been 'considered an essential attribute of sovereignty.'" *Idaho v. Coeur d'Alene Tribe*, 117 S. Ct. 2028, 2041 (1997) (quoting *Utah Div. of State Lands v. United States*, 482 U.S. 193, 195-98 (1987)).[13] Because the State is asserting title to the wreck, it is a party in fact and is entitled to Eleventh

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[13] Courts of appeals that have dismissed *in rem* admiralty actions against historic shipwrecks on Eleventh Amendment grounds have noted the presence of the wreck on the State's submerged lands. *See Zych*, 960 F.2d at 667, 670; *Fitzgerald*, 866 F.2d at 17; *Maritime Underwater Surveys*, 717 F.2d at 8. *Cf. Marx v. Government of Guam*, 866 F.2d 294, 300-01 (9th Cir. 1989).

Amendment immunity. Further evaluation of the merits of the State's claim, particularly after the location of the wreck on the State's sovereign lands has been established, would conflict with the "role of the [Eleventh] Amendment in our system of federalism," which is "to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties." *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) ("*PRASA*") (citation and internal quotation marks omitted).

The Ninth Circuit subjected the State of California to just such an indignity by requiring the State to prove that it was entitled to prevail on the merits as a prerequisite to receiving Eleventh Amendment immunity. The court of appeals' reasons for imposing such a requirement conflict with decisions of this Court. The Ninth Circuit's view that Eleventh Amendment immunity is a mere "affirmative defense," *see* Pet. App. A12-A13, was rejected by this Court in *PRASA*. *See* 506 U.S. at 145-46. Even if the State bears the burden of asserting Eleventh Amendment immunity, "a motion by a State or its agents to dismiss on Eleventh Amendment grounds . . . generally will have no bearing on the merits of the underlying action." *Id.* at 145 (citation omitted).[14] *Treasure Salvors*, moreover, contradicts the Ninth Circuit's holding that the preponderance of the evidence standard merely enables the district court to determine its

[14] The court of appeals relied on *ITSI TV Prods., Inc. v. Agricultural Ass'ns*, 3 F.3d 1289 (9th Cir. 1993). *See* Pet. App. A12-A13. In *ITSI*, however, the court required an entity asserting Eleventh Amendment immunity to prove by a preponderance of the evidence that it was an arm of the State and therefore entitled to immunity. The *ITSI* court did not require the State to make any showing on the merits, let alone prove its claim by a preponderance of the evidence.

jurisdiction. *See* Pet. App. A11-A12. In *Treasure Salvors*, the lower courts had treated the State's ownership of the *res* as a "jurisdictional fact" that had to be resolved in order to determine "whether the Eleventh Amendment in fact barred an exercise of jurisdiction by the federal court." 458 U.S. at 681 n.14, 682. Eight justices agreed, however, that the Eleventh Amendment bars a federal court from adjudicating the State's interest in the property, thus removing proof of ownership from the jurisdictional analysis. Accordingly, the Eleventh Amendment bars a federal district court from adjudicating California's claim to the *Brother Jonathan*.[15]

II. THE ASA DOES NOT PREEMPT CALIFORNIA'S LAW GOVERNING ARCHAEOLOGICAL SITES LOCATED IN OR ON THE STATE'S SUBMERGED LANDS.

Under the Supremacy Clause, U.S. Const. art. VI, cl. 2, Congress may expressly preempt state law. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). In the absence of an express statement of preemption, "courts must consider whether the federal statute's structure and purpose, or nonspecific statutory language, nonetheless reveal a clear, but implicit, preemptive intent." *Barnett Bank of Marion County, N.A. v. Nelson*, 116 S. Ct. 1103, 1108 (1996) (citation omitted). In either case, "[t]he purpose of Congress is the ultimate touchstone of pre-emption analysis." *See*

[15] Respondent is free to bring a quiet title action in California state court to test the validity of the State's claim. The Eleventh Amendment would not preclude a federal court from adjudicating the claims of parties other than the State in an *in rem* action. *See Zych*, 960 F.2d at 670; *Sindia Expedition, Inc. v. Wrecked & Abandoned Vessel, Known As "The Sindia"*, 895 F.2d 116, 121-23 (3d Cir. 1990). If the State is found to be an indispensable party to the *in rem* action, however, the entire action must be dismissed under Fed. R. Civ. P. 19. *See Fitzgerald*, 866 F.2d at 18-19; *Maritime Underwater Surveys*, 717 F.2d at 8 & n.3.

Cipollone, 505 U.S. at 516 (internal quotation marks and citations omitted).

The ASA contains no provision expressly preempting state law. The district court erroneously viewed section 7(b) of the ASA, 43 U.S.C. § 2106(b), as an express preemption clause. *See* Pet. App. A46. Section 7(b) provides that "[t]his chapter shall not change the laws of the United States relating to shipwrecks, other than those to which this chapter applies." By its plain terms, section 7(b) simply confirms that the ASA does not affect the law applicable to shipwrecks that are outside its scope. That provision falls well short of the affirmative preemptive statement required to expressly preempt state law.[16]

Nor does the ASA implicitly preempt state laws governing title to historic shipwrecks. Congress has not "so thoroughly occupie[d] [the] legislative field as to make reasonable the inference that Congress left no room for the states to supplement it." *Cipollone*, 505 U.S. at 516 (citation and internal quotation marks omitted). This Court has recognized repeatedly that admiralty is not an exclusively federal domain.[17] Rather than occupying the field of historic

[16] Congress knows how to preempt state law expressly when it wants to do so. For example, the Comprehensive Smokeless Tobacco Health Education Act of 1986, 15 U.S.C. §§ 4401-4408 (1994), contains two express preemption clauses, as well as a saving clause providing that "[n]othing in this chapter shall relieve any person from liability at common law or under State statutory law to any other person." 15 U.S.C. § 4406(c).

[17] *See, e.g., American Dredging Co. v. Miller*, 510 U.S. 443, 447 (1994) (state forum non conveniens rule applies in admiralty); *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 373-75 (1959) (listing additional state law provisions valid in admiralty cases); *Wilburn Boat Co. v. Fireman's Fund Ins.*, 348 U.S. 310 (1955) (state law governs maritime insurance contracts); *Madruga v. Superior Court*, 346 U.S. 556, 561 (1954) (actions to resolve title questions between individuals, and not against the entire world, may be brought in state court).

shipwreck preservation, Congress has recognized in the ASA that the States have the primary role in managing historic shipwrecks located on the State's sovereign submerged lands.

There is also no conflict between the ASA and Cal. Pub. Res. Code § 6313. It is not "impossible for a private party to comply with both state and federal requirements." *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (citations omitted). And the state law is not "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* (citation and internal quotation marks omitted) To the contrary, section 6313 *furthers* the stated purpose of the ASA, which is to ensure State control over historic shipwrecks located in or on state submerged lands. Congress found that "States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands," 43 U.S.C. § 2101(a), and declared as a matter of federal policy that States should

> develop appropriate and consistent policies so as to —
>
> (A) protect natural resources and habitat areas;
> (B) guarantee recreational exploration of shipwreck sites; and
> (C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

Id. § 2103(a). Congress expressly provided that "[t]he [federal] law of salvage and the law of finds shall not apply to abandoned shipwrecks" covered by the ASA. *Id.* § 2106(a).

The ASA was enacted in direct response to burdensome litigation faced by state preservation programs in the federal

courts. *See supra* note 6. Representative Vento, a primary sponsor of the ASA, explained the problem that the Act sought to redress:

> Currently, some 27 States have laws concerning the protection of historic shipwrecks. These States spend a disproportionate amount of effort and expense in admiralty court arguing for jurisdiction over the shipwrecks on their State submerged lands.

134 *Cong. Rec.* 6613 (1988). After describing the conflict between state cultural resource management programs and federal admiralty court rulings, Representative Vento expressed the view that "the States can do a better job of making sure that these few abandoned shipwrecks are available to all the appropriate interests and not just to the salvors." *Id.* (statement of Rep. Vento).

The court of appeals' preemption ruling appears to have been based largely on an incorrect assumption that, apart from the ASA, States have no authority to legislate concerning historic shipwrecks located on the their submerged lands. *See* Pet. App. A7-A9. Although this Court has never drawn a bright line establishing "just how far the general maritime law may be changed, modified, or affected by state legislation," it has recognized "[t]hat this may be done to some extent cannot be denied." *American Dredging*, 510 U.S. at 451 (quoting *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 216 (1917)). California's law governing historic sites located on its sovereign submerged lands falls well within the realm of permissible state legislation. Preservation of historic shipwrecks on state lands is far from the core concerns of admiralty law. *See* S. Rep. No. 100-241, at 6 ("The Committee recognizes that the management of long submerged and abandoned shipwrecks now presents concerns far removed from the traditional admiralty interests in safety and in returning goods to the streams of commerce."); H.R. Rep.

100-514(I) at 2 (1988) ("Admiralty law . . . developed to encourage the salvage of commercial goods. Its focus is commercial, not cultural resource management or recreation.").

California's section 6313 supplements the ASA by extending protection to additional sites of historic and archaeological value located in or on the State's submerged lands. In so doing, section 6313 does not impinge on admiralty's core concern with maritime commerce, but rather is entirely in accord with the overriding purpose of the ASA to confirm the States' title to and authority over historic shipwrecks located in or on their submerged lands. Accordingly, Cal. Pub. Res. Code § 6313 is not expressly or implicitly preempted by the ASA.[18]

III. LONG-LOST HISTORIC SHIPWRECKS SHOULD BE PRESUMED TO BE ABANDONED.

The court of appeals' decision effectively eviscerates the ASA by defining the concept of "abandonment" so narrowly that very few historic shipwrecks will continue to be protected by the ASA. *See* 43 U.S.C. § 2105(a). This Court should correct the court of appeals' erroneous definition of abandonment, and reinstate the definition of abandonment that

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[18] Even if section 6313 and the ASA did not exist, the State might have a claim to the *Brother Jonathan* under admiralty's law of finds. The American law of finds generally assigns ownership to the person who discovers lost or abandoned property and reduces it to possession, but there are two exceptions to this rule: "(1) when the property is embedded in the soil, it belongs to the owner of the soil; and (2) when the owner of the land where the property is found (whether on or embedded in the soil) has asserted constructive possession of the property, it belongs to the owner of the land." 2 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 16.7, at 341 (2d ed. 1994). *See also Klein v. Unidentified Wrecked & Abandoned Sailing Vessel*, 758 F.2d 1511, 1514 (11th Cir. 1985).

Congress intended to apply under the ASA — namely, that abandonment can be inferred from the passage of time.

A. Abandonment May Be Implied From Inaction Over A Period Of Time.

Although the ASA does not expressly define "abandonment," Congress clearly understood the term and used it to ensure that the ASA would apply to long-lost historic shipwrecks.[19] The legislative reports that accompanied the ASA expressly state that abandonment can arise from inaction over a period of time:

> The Committee notes that the term "abandoned" does not require the original owner to actively disclaim title or ownership. The abandonment or relinquishment of ownership rights may be implied or otherwise inferred, as by an owner never asserting any control over or otherwise indicating his claim of possession of the shipwreck.

H.R. Rep. No. 100-514(I), at 2. *See also* H.R. Rep. No. 100-514(II), at 5; S. Rep. No. 100-241, at 5 (1987).[20]

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[19] Congress structured the ASA to apply to "abandoned" shipwrecks, but excluded more recent shipwrecks by requiring that protected shipwrecks must also possess other characteristics common to historic shipwrecks. For example, it was known that shipwrecks become embedded in the seabed and in coral over time. Congress also included shipwrecks lying on submerged lands and that are eligible for inclusion in the National Register of Historic Places. This category includes shipwrecks that are lying on rock (or that are not embedded for some other reason) but are nevertheless historic. *See* 43 U.S.C. § 2105(a).

[20] National Park Service Guidelines, issued pursuant to 43 U.S.C. § 2104, further clarify the meaning of abandonment:

> By not taking any action after a wreck incident either to mark and subsequently remove the wrecked vessel and its cargo or to provide legal notice of abandonment to the U.S. Coast Guard and the U.S. Army Corps of Engineers, as is required under provisions in the Rivers and Harbors Act (33 U.S.C. 409), an owner shows intent to give up title. Such shipwrecks ordinarily are treated as being abandoned after the expiration of 30 days from the sinking.

55 Fed. Reg. 50,115, 50,120 (1990).

These statements are consistent with the traditional maritime rule that abandonment "may be accomplished by either an express or implied act of leaving or deserting property without hope of recovering it and without the intention of returning to it." *Bunge Corp. v. Agri-Trans Corp.*, 542 F. Supp. 961, 969 (N.D. Miss. 1982) (citing 3A *Benedict on Admiralty* § 134 (7th ed. 1980)), *aff'd in part and vacated in part on other grounds*, 721 F.2d 1005 (5th Cir. 1983). In the absence of express statements or acts, abandonment is determined from all the circumstances. *Chance v. Certain Artifacts Found & Salvaged from the Nashville, A/K/A, The Rattlesnake*, 606 F. Supp. 801, 804 (S.D. Ga. 1984), *aff'd without op.*, 775 F.2d 302 (11th Cir. 1985).[21]

Applying these principles to historic shipwrecks, most courts have held that abandonment may be inferred from the passage of time, absent affirmative acts showing non-

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[21] The traditional maritime definition of abandonment is applied to determine whether a salvor receives title under the law of finds or a salvage award under the law of salvage. The law of finds is predicated on the assumption that the property is abandoned, and that the finder of lost or abandoned property is entitled to ownership. *See, e.g., Martha's Vineyard Scuba Headquarters, Inc. v. Unidentified, Wrecked & Abandoned Steam Vessel*, 833 F.2d 1059, 1065 (1st Cir. 1987). The law of salvage is predicated on the assumption that the owner has not abandoned the property. 2 Schoenbaum, *supra*, § 16-7, at 338.

abandonment.[22] In a leading case, the Fifth Circuit observed that "[d]isposition of a wrecked vessel whose very location has been lost for centuries as though its owner were still in existence stretches a fiction to absurd lengths." *Treasure Salvors, Inc. v. Unidentified, Wrecked & Abandoned Sailing Vessel*, 569 F.2d 330, 337 (5th Cir. 1978).[23]

B. Whether Technology Needed To Salvage A Vessel Was Developed Only Recently Should Not Preclude A Determination That A Long-Lost Historic Shipwreck Is Abandoned.

The court of appeals erroneously concluded that "[w]hen the technology to conduct salvage operations has been developed recently, failure on the part of an owner to attempt

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[22] This rule is sometimes referred to as the doctrine of *animus revertendi* (the owner has no intention of returning). *Chance*, 606 F. Supp. at 804.

[23] *See also Martha's Vineyard*, 833 F.2d at 1065 ("[I]n cases where . . . articles have been presumptively abandoned, *i.e.*, . . . so long lost that time can be presumed to have eroded any realistic claim of original title . . . the better-reasoned authorities agree that the law of finds may appropriately be utilized."); *Moyer*, 836 F. Supp. at 1105 (holding that insurance company's lack of effort to salvage wreck from 1956 to present constituted abandonment); 2 Schoenbaum, *supra*, § 16.7, at 339-40 ("In the treasure salvage cases, often involving wrecks hundreds of years old, the inference of abandonment may arise from lapse of time and non-use of property. . . . In virtually all of the treasure salvage cases involving wrecks of great antiquity, the law of finds, not salvage, is appropriate . . . ."); 70 Am. Jur. 2d *Shipping* § 974, at 1076 (1987) ("The most significant factor indicating abandonment appears to be the passage of a considerable length of time without effort on the part of the owners to secure repossession of their property."). *But cf. Columbus-America Discovery Group v. Atlantic Mut. Ins. Co.*, 974 F.2d 450, 464-65 (4th Cir. 1992) (inference of abandonment of long-lost shipwreck improper if a previous owner appears and asserts his ownership interest), *cert. denied*, 507 U.S. 1000 (1993).

to salvage the wreck does not give rise to an inference that the owner has abandoned title to the vessel." Pet. App. A17. Although pre-ASA cases do not appear to have discussed this issue, those cases analyzed abandonment by looking to the owner's intent at the time the vessel was lost. *See, e.g., Martha's Vineyard Scuba Headquarters, Inc. v. Unidentified, Wrecked & Abandoned Steam Vessel*, 833 F.2d 1059 (1st Cir. 1987); *Chance v. Certain Artifacts Found & Salvaged*, 606 F. Supp. 801 (S.D. Ga. 1984). If salvage was not technologically feasible at the time of the wreck, that fact supports the inference that the owner intended to abandon the wreck, because there was no realistic hope of recovering the vessel or its cargo. The court of appeals departed from these decisions by assessing an owner's past intentions in light of present-day expectations and capabilities.[24]

The court of appeals' ruling is fundamentally inconsistent with the principle that abandonment can be inferred from the passage of time. Indeed, to the extent that the court of appeals was relying on recently-developed technology, it effectively adopted a reverse presumption that long-lost ships are not abandoned. When combined with commercial salvors' tactic of obtaining assignments of interests from insurers of long-lost vessels and cargo, the Ninth Circuit's holding permits the revival of many dormant claims that traditionally would have been deemed to have been abandoned, thereby severely limiting the scope of the ASA.[25]

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[24] As discussed above, *see supra* pp. 2-3, technology for salvaging shipwrecks and cargo from depths of more than 250 feet has been in existence since early this century. This casts considerable doubt on the Ninth Circuit's holding that the *Brother Jonathan* was not previously salvageable and thus not abandoned.

[25] Because marine insurance for vessels and cargo has been in existence since well before the founding of this country, many shipwrecks within the geographical scope of the ASA would be subject to salvors'

The court of appeals' ruling ignores the origins of the ASA, which Congress enacted to protect historic shipwrecks from depredations made possible by the wider availability of deep sea technology.[26] Although other courts have considered the availability of technology as a factor in determining whether there was intent to abandon, no other court has gone so far as to hold that the non-existence of technology could be dispositive on the issue of abandonment.[27]

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attempts to obtain assignments of interests from insurers of vessels and cargo or their successors in interest.

[26] As the Senate Report explained:

> As new technologies have allowed the recovery of wrecks that have been lost for long periods of time, a new concern has been developed for the historic and recreational interests in shipwrecks. Shipwrecks are no longer viewed as only lost commercial resources that should be salvaged so that the goods can be returned to commerce. Rather, many shipwrecks are now used as recreational resources for sport divers and fishermen and are viewed as invaluable and irreplaceable archaeological resources.

S. Rep. No. 100-241 at 6. *See also* H.R. Rep. No. 100-514(I) at 1; 134 Cong. Rec. 5336-5337 (1988) (remarks of Rep. Vento).

[27] *Compare Zych*, 755 F.Supp. at 216 (the owners had left explicit and express instructions that the shipwreck not be abandoned despite its depth), *and Columbus-America Discovery Group*, 974 F.2d at 464-65 (owners had initiated salvage efforts shortly after vessel sank and continued to negotiate with salvors during the intervening 130 years) *with Fairport Int'l Exploration, Inc. v. Shipwrecked Vessel Known as the Captain Lawrence*, 105 F.3d 1078 (6th Cir. 1997) (court held that adequate salvage technology *did* exist under the facts of that case, therefore supporting its finding that the shipwreck was abandoned).

C. There Is No General Rule That A Vessel And Its Cargo Must Be Treated As A "Unified *Res*."

The court of appeals applied what it took to be a "general rule in maritime law of treating wrecks as a legally unified *res*." Pet. App. A18.[28] The court of appeals cited no authority for this "general rule," and in fact there is no such rule.

This Court recognized as early as 1815 that property interests in a vessel and its cargo may be treated separately. *See The Mary*, 13 U.S. (9 Cranch) at 142-43 (holding in prize case that although the vessel properly was condemned where the vessel's owner defaulted, that judgment could have no effect against the vessel's cargo because "[t]he owners of the cargo had no control over the owner of the vessel"). This principle has been reaffirmed in various factual settings. *See Stratton v. Jarvis*, 33 U.S. (8 Pet.) 4, 6, 10-11 (1834) (salved vessel and its cargo are not jointly liable for the whole salvage award, where the cargo consisted of multiple parcels owned by multiple parties); *Columbus-America Discovery Group*, 974 F.2d at 468 (although the vessel itself was abandoned, the insured portions of the cargo were not); *Compania Galeana, S.A. v. Motor Vessel Caribbean Mara*, 565 F.2d 358, 359 (5th Cir. 1978) (affirming separate settlement agreements between the plaintiff and the vessel as well as the plaintiff and the cargo); *Bemis v. RMS Lusitania*, 884 F. Supp. 1042 (E.D. Va. 1995) (salvor secured title to the hull of the ship from the insurance company but was denied title to the cargo and

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[28] This element of the court's holding disposed of the State's argument that although the insured portion of the wreck might not be considered to be abandoned, the uninsured portions should be considered abandoned. However, the court "reserve[d] the question of whether there is some point at which the portion of the wreck that is insured becomes so negligible that the wreck might be considered abandoned for the purposes of the ASA." Pet. App. A19.

personal belongings because the insurer never had a legal interest in them), *aff'd without op.*, 99 F.3d 1129 (4th Cir. 1996); *Hener v. United States*, 525 F. Supp. 350, 364 (S.D.N.Y. 1981) (two competing groups of salvors were entitled to attempt a salvage of cargo that belonged to a single owner); *Georgia Co. v. Richfield Oil Co.*, 50 F.2d 901, 902 (W.D. Wash. 1930) (*The Kekoskee*) (salvaged vessel and its cargo are not considered a unified res, even if owned by the same person or entity). *See also* 3A Martin J. Norris, *Benedict on Admiralty* § 207, at 16-5 (7th ed. 1997) ("the interests in the vessel and in the cargo are only severally liable, each for its proportionate share of the salvage remuneration").

In short, admiralty law recognizes independent claims against a vessel and its cargo — and even against distinct portions of its cargo — regardless of whether vessel and cargo are owned by a single party or multiple parties. The ASA does not dictate a different result.[29]

D. The Possibility Of Litigation In Two Courts Cannot Justify A Rule That Effectively Defeats The Purpose Of The ASA.

The court of appeals also concluded that if the wreck were divided into abandoned and unabandoned portions, "we would have to dismiss the action in federal court with respect to the abandoned part of the wreck and retain jurisdiction over the part on which insurance claims were paid." Pet. App.

[29] If a "unified *res*" principle were to be applied, it should operate in the other direction: a partially abandoned shipwreck should be treated as completely abandoned for purposes of the ASA, especially where, as here, only a portion of the cargo is alleged to have been unabandoned and the historic vessel itself is unclaimed. Such an approach would further the purposes of the ASA.

A18. The court thought it "unlikely that Congress intended such a confusing and inefficient approach." *Id.*

Declining to treat a shipwreck as a unified *res* will not necessarily lead to litigation in more than one forum. In some cases, the State is the only competing claimant. If the State asserts a claim to the entire wreck in such a case, the entire action must be dismissed under the Eleventh Amendment. In addition, the entire action may be dismissed for other reasons (*e.g.*, if the State is determined to be an indispensable party).

A salvor may elect to litigate claims of parties other than the State in state court. *See Madruga*, 346 U.S. at 560-61 (state courts may adjudicate maritime causes of action in proceedings brought *in personam*). In enacting the ASA, Congress plainly regarded state courts as a suitable forum for adjudicating rights to shipwrecks located on the State's submerged lands. *See* 134 Cong. Rec. 6615 (1988) (remarks of Rep. Jones) ("We can depend on State courts to apply State and Federal policies fairly to all affected parties.")

Although a salvor seeking a judgment "against all the world" may be required to bring a separate *in rem* action in federal court as to the unabandoned portion of a wreck, parallel litigation in federal and state court is hardly a rarity. The mere possibility of such a situation cannot justify a rule that effectively denies the protection of the ASA to many historic shipwrecks. Accordingly, the court of appeals erred in holding that the *Brother Jonathan* should be treated as a "unified *res*."

CONCLUSION

The judgment of the court of appeals should be reversed.

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APPENDIX

Interests of *Amici Curiae* Organizations

National Trust for Historic Preservation

The National Trust for Historic Preservation in the United States ("National Trust") was chartered by Congress in 1949 as a private charitable, educational, and nonprofit organization to "facilitate public participation in the preservation of sites, buildings and objects significant in American history and culture," and to further the purposes of federal historic preservation laws. 16 U.S.C. §§ 461, 468. The National Trust has grown to include more than 265,000 individual members and approximately 3,500 member organizations, as well as operating seven regional and field offices.

Through its Legal Defense Fund, the National Trust advocates to secure judicial, administrative, and legislative decisions that uphold the validity and effectiveness of regulatory protections for historic resources throughout the United States. The National Trust has a particular interest in the protection of historic shipwrecks. The National Trust actively supported the passage of the Abandoned Shipwreck Act of 1987 and has participated as *amicus* in cases challenging and upholding its legality and effectiveness. The National Trust has participated in more than 100 federal and state court cases over the past quarter century and has participated as an *amicus* in 14 cases before this Court.

Advisory Council on Underwater Archaeology

The Advisory Council on Underwater Archaeology ("ACUA") is an elected body of leaders in the field of underwater archaeology and is associated with the Society for Historical Archaeology. The purposes for which the ACUA is organized are to preserve and protect underwater

archaeological sites, to encourage maintenance of the highest ethical and research standards in underwater archaeology, and to educate the general public and sport diving community about the need for conservation of underwater archaeological resources. The ACUA encourages the publication of underwater archaeological research and the distribution and dissemination of information concerning archaeological matters. The organization also sponsors and publishes the proceedings of an annual Conference on Underwater Archaeology.

Council of American Maritime Museums

The Council of American Maritime Museums ("CAMM") exists to uphold, promote and further the welfare, programs and activities of maritime museums in the Western hemisphere. To these ends, CAMM works to insure that high professional standards are adhered to in the preservation and interpretation of maritime history, collections, sites and vessels. CAMM also encourages cooperation between member museums in research and loan exhibits, jointly sponsors publications, and promotes public awareness of itself and the interests of its members. In addition, CAMM lobbies on legislation and government actions affecting its members.

Institute of Nautical Archaeology

The Institute for Nautical Archaeology is an academic and scientific institution dedicated to the excavation, study and preservation of shipwrecks of historic and pre-historic significance. The Institute faculty is comprised of practicing archaeologists engaged in projects involving shipwrecks in United States waters, the Caribbean Sea, the Mediterranean Ocean, the Azores Islands, Kenya, Eritrea and elsewhere. In the United States, the Institute has participated in projects involving shipwrecks in the James River, the Gulf of Mexico and the Great Lakes. The Institute has a vital interest in the

preservation of ships subject to the Abandoned Shipwreck Act for academic study, recovery and museum display.

National Conference of State Historic Preservation Officers

The National Conference of State Historic Preservation Officers ("NCSHPO") is a non-profit, professional organization representing the State Historic Preservation Officers in the 59 States, territories and the District of Columbia. The role of NCSHPO in the administration of the national historic preservation program was recognized in the 1980 amendments to the National Historic Preservation Act. 16 U.S.C. § 470. NCSHPO encourages research and development concerning historic preservation programs, as well as legislative proposals for the implementation of programs at the state and federal levels. NCSHPO actively supported the passage of the Abandoned Shipwreck Act of 1987.

North American Society for Oceanic History

The North American Society for Oceanic History ("NASOH"), incorporated in 1974, is a not-for-profit organization whose members include curators of maritime museums and history professors across the U.S. and in Canada. The goals of the organization include the research and promotion of maritime history. NASOH sponsors a annual conference at which members present scholarly papers and the organization rewards outstanding publications on maritime history and nautical archaeology. For several years, NASOH has also worked on behalf of the preservation of historic shipwrecks.

Society for American Archaeology

The Society for American Archaeology ("SAA") is a scholarly organization of professionals whose objective is to encourage new research and interpretation of the archaeological record in the Americas. Other goals of the

organization include education, public communication, and the protection of resources. To disseminate information, SAA holds annual meetings and publishes *American Antiquity*, a journal of papers on the archaeology of the Western Hemisphere and closely related subjects. SAA is also involved in legislative action and government relations affecting the discipline of archaeology.

Society for California Archaeology

The Society for California Archaeology ("SCA") is a non-profit organization founded in 1966 and dedicated to the research, understanding, conservation, interpretation and protection of California's archaeological heritage. Today, SCA has approximately 800 members, including professional archaeologists employed by universities and colleges, government agencies, museums and research institutions, utility companies, and private consulting firms. SCA members also include student and avocational archaeologists, Native American scholars, historians, environmental planners, and members of the general public. SCA holds an annual conference and two annual data-sharing meetings in both northern and southern California, as well sponsoring the annual California Archaeology Week. The organization publishes a quarterly newsletter on annual proceedings, and produces an occasional publication series.

Society for Historical Archaeology

The Society for Historical Archaeology ("SHA") is the largest professional organization of scholars concerned with the archaeology of the modern world (from A.D. 1400 to the present). SHA is concerned with the identification, excavation, interpretation and preservation of sites and artifacts from both the land and underwater. The organization annually sponsors the international Conference on Historical and Underwater Archaeology and publishes the proceedings entitled *Underwater Archaeology* each year with the assistance

of the Advisory Council on Underwater Archaeology. The great significance of historic shipwrecks lead SHA to strongly support Congress's enactment of the Abandoned Shipwreck Act of 1987.

Society of Professional Archeologists

The Society of Professional Archeologists ("SOPA") is a national non-profit association of more than 700 professional archeologists. SOPA seeks to define professionalism in the field, to establish national standards for archeological practices, research and performance, and to identify those individuals who possess the ability and willingness to meet those standards. The organization maintains standards for various archeological specialities including underwater archeology. Also, SOPA serves to represent the profession working with other professional organizations, governmental agencies and private enterprises to further the goals of archeology. SOPA strongly supported Congress' enactment of the Abandoned Shipwreck Act of 1987, as an important and needed measure for ensuring that these fragile and irreplaceable resources are appropriately preserved and managed as cultural and archeological sites.